IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 12TH DECEMBER 2006 / 21ST AGRAHAYANA 1928

WP(C).No. 17506 of 2006(H)

AGAINST THE ORDER DATED 27 /03/2006 IN E.P.791/2003 IN O.S..174/1993 of PRL.M.C.,ERNAKULAM

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PETITIONER:

C.GOPAKUMAR, AGED 34 YRS,
S/O. CHANDRASEKHARA MENON, AZHAKIL HOUSE,
CHUTTUPAD KARA, EDAPPALLY VILLAGE.

BY ADV. SRI.S.K.MURALEEDHARA KAIMAL

RESPONDENTS:

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1. PRESIDENT, BALACHANDRAN,
S/O. VISALAKSHAN, BUSINESS, RESIDING AT
KALLUPARAMBIL HOUSE, ANAPPUZHA DESOM,
METHALA VILLAGE, KODUNGALLUR TALUK.

2. VICE PRESIDENT, PAVANAN, S/O. CHANDRAN,
AGRICULTURIST, RESIDING AT PLACKAPARAMBIL HOUSE,
ANAPPUZHA DESOM, METHALA VILLAGE,
KODUNGALLUR TALUK.

3. SECRETARY,
RADHAKRISHNAN, S/O. CHANDRAN, RESIDING AT
NOTTENTEPARAMBIL HOUSE, ANAPPUZHA DESOM,
METHALA VILLAGE, KODUNGALLUR TALUK.

4. TREASURER, SAJITH, S/O. RAVEENDRAN,
RESIDING AT ARACKAPARAMBIL HOUSE,
KOTTAPPURAM DESOM, METHALA VILLAGE,
KODUNGALLUR TALUK.

BY ADV. SRI.K.C.CHARLES
SRI.A.BALAGOPALAN
SRI.A.RAJAGOPALAN
SMT.KALA G.NAMBIAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C)17506/06

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF E.P.791/03 IN O.S.174/93 OF PRINCIPAL MUNSIFF, ERNAKULAM

EXT.P2: TRUE COPY OF THE ORDER DATED 27.3.06 IN E.P.791/03 IN O.S.174/93 OF PRINCIPAL MUNSIFF, ERNAKULAM.

/TRUE COPY/

PA TO JUDGE.

M.SASIDHARAN NAMBIAR,J.

W.P.(C)NO.17506 OF 2006

DATED THIS THE 12th DAY OF DECEMBER, 2006

JUDGMENT

Petitioner is the judgment debtor. Respondents are the decree holders. Petitioner is challenging Ext.P2 order whereunder his arrest and detention was ordered for non payment of the decree debt. Under Ext.P2 order, executing Court found that petitioner has sufficient means and he intentionally neglected to pay the decree debt. On hearing learned Counsel appearing for petitioner and respondents, it is clear that learned Munsiff has not properly considered the question. Though it is stated that Pws 1 to 3 were examined, the order does not show what was the evidence tendered by Pws 1 to 3 and whether evidence of Pw1 was either controverted or corroborated by the evidence of Pws 2 and 3. In effect the order is a non speaking order.

2. Learned Counsel appearing for petitioner submitted that infact what ever was deposed by Pw1 the decree holder was disproved by Pw2 the wife of first judgment debtor and also by Pw3. Whatever it be, it is clear that learned Munsiff has not properly considered the evidence. The grievance of petitioner is that he did not get opportunity to adduce evidence. In such circumstances, Ext.P2 order is quashed. The executing Court is directed to grand an opportunity to the

petitioner to get himself examined. The executing court thereafter has to consider whether petitioner has or had sufficient means and neglected to pay the decree debt and so could be arrested and detained as sought for by respondents. Petitioner shall get ready to adduce evidence on the next posting date.

The executing Court is directed to dispose the execution petition as expeditiously as possible and in any event within three months from the date of receipt of a copy of this judgment. Parties are directed to appear before the executing Court on 9.1.2007.

M.SASIDHARAN NAMBIAR,JUDGE

Acd